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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,226	04/09/2001	Kevin A. McIntyre	3598-2	5634

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EXAMINER
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FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/828,226

Applicant(s)

MCINTYRE, KEVIN A

Examiner

Daniel S Felten

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-21 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-21 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Receipt of the Amendment filed April 02, 2004 amending claims 1, 4, 5, 9, 10, 12-14, 19, 20 and 25 and canceling claims 3, 8, 22 and 23. Claims 1, 2, 4-7, 9-21 and 25 remain pending in the application and are presented to be examined upon their merits.

### ***Response to Arguments***

2. In consideration of applicant's arguments, the examiner concedes on the use of "if" in the claims. The 35 U.S.C. § 112, second paragraph rejection of "if" is rescinded.

In regards to the applicant's description of a "theoretical price point". The applicant asserts that the "theoretical price point" is a price point generated by the system is above the buyer's upper limit and below the seller's lower limit e.g., when an overlap region does not exist. It is respectfully submitted to the applicant that the aforementioned description of theoretical price point is being interpreted by the Examiner as nothing more than the notoriously old and well known discovery price that is negotiated for an item in an auction or other bidding process. Thus rejections using new prior art are presented below to cover this concept as presented with the amended claims.

In regards to claim 11, it is respectfully submitted that although the claim(s) are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant's method provides a component for preventing gaming of the system. It is

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maintained that one of ordinary skill in the art would not know the steps of how this process is carried out from the claim without reading the limitation(s) of the specification into the claim. Therefore the 35 U.S. C § 112 second paragraph rejection is maintained for claim 11.

Moreover, Further 35 U.S. C § 112 second paragraph rejections and new 35 U.S. C § 103(a) rejections are forthcoming below to address the amends made below.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1,2, 4-7, 9-21 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is nothing the body of the claim(s) that links to the preamble inasmuch as the body of the claim does not show steps of conducting a ***transaction*** between a buyer and a seller, because transactions between buyers and sellers involve the exchange of financial information, payment of money, etc.,.

***Claim Rejections - 35 USC § 103***

5. Claims 1, 2, 4-7, 9-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rossides (US 5,749,785) in view of Conklin et al (US 6,141, 653).

**Re claims 1, 17, 19, 20 and 25:**

Rossides discloses a computer system having a computer program utilizing a method of conducting a transaction between two parties in the form of a bet (see Rossides, col. 6, ll. 30-31)

(a) receiving a lower limit price for a product from the first party making a bid and/or bet (see Rossides, col. 38, ll. 1)

*the second party (Beth) being unaware of the first party's (Jim) lower limit price (see Rossides, col. 40, ll. 31-33);*

(b) receiving an upper limit bid for the product from the second party (Beth), *the first party (Jim) being unaware of the buyer's upper limit bid* wherein step (b) is practiced by allowing only one bid for the product from the buyer (see Rossides, col. 40, ll. 36-39);

(c) comparing the first party's (Jim's) lower limit price and the second party's (Beth's) upper limit bid (see Rossides, col. 40, ll. 40-59); and

(d) when an overlap region exists between the first party's (Jim's) lower limit and the second party's (Beth's) upper limit bid, setting a price point for the production

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within the overlap region that is based on the lower limit price and the upper limit bid (see Rossides, col.40, ll. 60 to col. 42, ll. 37).

Rossides fails to disclose if the overlap region does not exist between the seller lower limit price and the buyer upper limit bid, further processing the transaction by setting a theoretical price point between the lower limit price and the upper limit bid.

Conklin discloses if the overlap region does not exist between the seller lower limit price and the buyer upper limit bid, further processing the transaction by setting a theoretical price point between the lower limit price and the upper limit bid (see Conklin, Abstract, col. 13, ll. 66 to col. 14, ll. 30). It would have been obvious for an artisan of ordinary skill at the time of the invention to recognize that a theoretical price point is a conventional part of the negotiation process for an item between a bidder and seller in an auction or other bidding process when the bidders upper bid limit and the seller's lower limit price do not overlap. Thus Rossides would have sought to integrate the remote negotiation features of Conklin to conveniently provide settlement of bets for items over a global network. Thus such features would have been considered an obvious expedient to one of ordinary skill in the art.

**Re claim 2:**

Rossides discloses wherein when an overlap exists between the first party's (Jim's) lower limit price and the second party's (Beth's) upper limit bid, step (d) is practiced by setting the price point for the product at a midpoint of the overlap region (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

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**Re claim 4:**

Rossides discloses wherein step (e) is practiced by terminating the transaction (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 5:**

Rossides wherein step (e) is practiced by notifying the seller and the buyer that an overlap region does not exist and requesting the seller and the buyer either (1) adjust the respective lower limit price (adjusted stakes) and upper limit bid, or (2) terminate the transaction (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 6:**

Rossides discloses after step (e), either (1) receiving an adjusted lower limit price and adjusted upper limit bid and repeating steps (c)-(e), or (2) receiving an instruction to terminate the transaction (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 7:**

Rossides discloses after step (e) receiving one of an adjusted lower limit price or an adjusted upper limit bid, and repeating steps (c)-(e) (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 9:**

Rossides wherein step (e) is practiced by setting a theoretical price point at midpoint between the lower limit price and the upper limit bid (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 10:**

Rossides discloses providing the seller and the buyer with an opportunity to agree on the theoretical price point, completing the transaction only when both the seller and the buyer agree on the theoretical price point, and otherwise terminating the transaction (see explanation for claim 1 above)

**Re claim 11:**

Providing a component for preventing gaming of the system (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 12:**

Wherein step (e) is further practiced by displaying a shortage region representing a difference between the lower limit price and the upper limit bid to the seller and the buyer (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 13:**



(see explanation for claim 1)

**Re claim 14:**

(see explanation for claim 1)

**Re claim 15:**

Wherein step (a) is practiced by additionally receiving an expiration relating to the product and by receiving an expiration relating to the product by receiving a lower limit price range from the seller that varies with time to the expiration (see Rossides, *deadline*, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 16:**

Wherein step (b) is practiced by additionally receiving and expiration relating to the upper limit bid and by receiving an upper limit bid range from the buyer that varies with time the expiration (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 18:**

Further comprising compiling a database of information relating to sellers, buyers, products and price points (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

**Re claim 21:**

Wherein when an overlap region exists between the seller lower limit price and the buyer upper limit bid, the setting means sets the price point for the product at a midpoint of the overlap region (see Rossides, col. 40, ll. 60 to col. 42, ll. 37).

***Conclusion***

1. A list of relevant prior art appears below not relied upon in this Office Action:

US Patents:

Thiessen (US 5,495,412) discloses computer-based method and apparatus for interactive computer-assisted negotiations

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

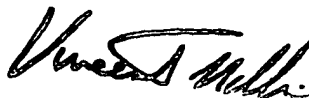
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel S Felten  
Examiner  
Art Unit 3624

DSF  
August 24, 2004



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